

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LARRY ARNOLD YOUNG,

Plaintiff,

v.

**CIVIL ACTION NO. 1:05CV55
(Judge Keeley)**

MIKE SMITH, F/S/ Supervisor,

Defendant.

REPORT AND RECOMMENDATION/OPINION

On March 23, 2005, the pro se plaintiff, Larry Arnold Young, an inmate at FCI-Morgantown, filed a Motion for Preliminary Junction in which he requests that the Court restrain the defendant from “singling plaintiff out, discriminating against; harassing; threatening; assaulting; and making degrading false accusations against plaintiff in front of almost the entire food service personnel.”

This matter is pending before me for initial review and report and recommendation pursuant to LR PL P 83.02.

According to the plaintiff, on March 14, 2005, as he was exiting the dining room with other inmates, the defendant allowed an inmate to exit with a stack of food service napkins. However, the defendant made the plaintiff give him his smock, and discovered a hair net and a piece of dried up flour tortilla shell. The defendant accused the plaintiff of stealing tortilla shells from food service. The defendant then pounded the plaintiff on the top and both sides of his head “undoubtedly checking his toboggan.” The plaintiff alleges that he sustained excruciating pain and anguish. He also asserts he had been sick off and on for three weeks and the next morning was “blowing clots

of blood out of [his] nose.”

The plaintiff alleges that “the infliction of ‘unnecessary and wanton’ punishment was deliberately indifferent intended to chastise, torture and inflict pain against plaintiff.” He further asserts that the defendant’s actions constitute cruel and unusual punishment.

The motion for preliminary injunction was filed as a prisoner’s civil right action and on March 23, 2005, the Court issued a Notice advising the plaintiff that he must pay the filing fee of \$250.00 or file an application to proceed without prepayment of fees. The plaintiff was further warned that the failure to comply with the notice within 30 days from the file date of the notice may result in the dismissal of the case without prejudice.

The plaintiff has not responded to the Court’s notice. He has not paid the filing fee or requested leave to proceed without prepayment of fees. Thus, the undersigned recommends that the case be dismissed without prejudice.

Any party may file within ten (10) days after being served with a copy of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk is directed to mail a copy of this Report and Recommendation/Opinion to the *pro se* plaintiff.

DATED: May 16th, 2005

/s *John S. Kaull*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE